

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

ROGER KREPS DRYWALL AND PLASTERING, INC.

Employer

and

PLASTERERS LOCAL NO. 80 a/w
OPERATIVE PLASTERERS & CEMENT
MASONS INTERNATIONAL ASSOCIATION

Case No. 8-RC-16339

Petitioner

and

BRICKLAYERS AND ALLIED CRAFTSWORKERS, LOCAL 16

Intervenor

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.¹

¹ Upon the entire record in this proceeding, the undersigned finds: the hearing officer's rulings made at the reopened hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein. The labor organizations involved claim to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time journeymen and apprentice plasterers employed by the Employer, except those employed in Mahoning, Trumbull, and Columbiana Counties in Ohio and Allegheny, Armstrong, Fayette, Forest, Greene, Jefferson, Lawrence, Mercer, McKean, Potter, Beaver, Butler, Cameron, Clarion, Clearfield, Crawford, Elk, Washington, Westmoreland, Warren and Venago Counties in Pennsylvania, but excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

The record does not indicate how many employees are in the unit found appropriate herein.

On April 4, 2002, the Regional Director issued a Decision and Direction of Election in this matter, ordering that an election be held in a unit of the Employer's journeymen and apprentice plasterers employed in Ashtabula, Cuyahoga, Geauga, Lake and Lorain Counties of Ohio. Subsequently, the Board granted review of the Regional Director's decision. On September 20, 2004, the Board remanded this matter to the Regional Director for further consideration in light of its decision in **Premier Plastering, Inc.**, 342 NLRB No. 111 (2004).² The Regional Director subsequently determined that additional evidence was required to decide the issues raised in the Board's remand and pursuant to his Order dated January 31, 2005, a hearing was held to secure said evidence on February 10, 2005.

² Due to inadvertence, the Region was not served with a copy of the Board's Order of remand until January 21, 2005.

In **Premier**, which also dealt with a unit of plasterers working for a construction subcontractor, the Board held that the only appropriate unit in such cases would normally not contain geographic limits. The sole exception noted by the Board was that geographic exclusions should be made when they coincide with areas covered by other Section 9(a) agreements to which the Employer is a party. See also **G.L. Milliken Plastering**, 340 NLRB No. 138 (2003).

At the time this petition was filed³ the Employer was party to a Section 9(a) agreement with Plasterer's Local 179 applicable to plasterers' work performed in Mahoning, Trumbull and Columbiana Counties in Ohio. Therefore, in accord with **Premier**, I find that the appropriate unit herein must exclude these three counties.

Further, the record shows that the Plasterers' Local 31 was certified as the exclusive collective bargaining representative of the Employer's plasterers working in certain counties in Pennsylvania on December 11, 2000.⁴ The Employer then became party to the contract between Local 31 and the Master Interior Contractors Association by signing a letter of understanding to that effect on December 12, 2000. The express term of the master contract that the Employer became signatory to is June 1, 1998 through May 31, 2005. However, as noted above, the Employer and the newly certified Local 31 entered into that contract on December 12, 2000. The Board has long held that a contract serves as a bar for a period up to 3-years. **General Cable Corp.**, 139 NLRB 1123 (1962). The instant petition was filed within that 3-year contract bar period. Accordingly, under **Premier**, the appropriate unit in this matter must also exclude plasterers performing work in the Pennsylvania counties covered by said 9(a) agreement.

³ February 20, 2002.

⁴ Case No. 6-RC-11891

Since the Employer is engaged in the construction industry and the record reflects that the number of unit employees varies from time to time, the eligibility of voters will be determined by the formula set forth in **Steiny & Co., 308 NLRB 1323 (1992)** and **Daniel Construction Co., 133 NLRB 264 (1961)**.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Also eligible to vote are those employees who have been employed for a total of 30 working days or more within the period of 12 months immediately preceding the eligibility date for the election, or who have some employment in that period and have

been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.

Those eligible shall vote whether or not they desire to be represented by (1) Plasterers Local No. 80, a/w Operative Plasterers and Cement Masons International Association, Local Union; (2) Bricklayers and Allied Craftworkers, Local No. 16 or (3) Neither.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969); Excelsior Underwear Inc., 156 NLRB 1236 (1966).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by March 8, 2005.

Dated at Cleveland, Ohio this 22nd day of February 2005.

/s/ [John Kollar].

John Kollar
Acting Regional Director
National Labor Relations Board
Region 8